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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

CURTIS PERRY,

Defendant and Appellant.

B261133

(Los Angeles County
Super. Ct. No. LA026155)

APPEAL from an order of the Superior Court of the County of Los Angeles,
Martin Herscovitz, Judge. Affirmed.

California Appellate Project, Jonathan B. Steiner, Executive Director, Richard B.
Lennon, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

INTRODUCTION

Defendant and appellant Curtis Perry (defendant) appeals from the trial court's order denying his petition for recall of his three strikes sentence. On appeal, defendant's appointed counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*) requesting that this court independently review the entire record to determine if there are any issues, which if resolved in defendant's favor, would require reversal or modification of the judgment. Accordingly, we notified defendant that he could brief any grounds of appeal, contentions, or arguments he wanted us to consider. Defendant did not file a supplemental brief.

Based on our independent review of the entire file, we conclude that there are no arguable issues on appeal. We therefore affirm the trial court's order denying his petition to recall his sentence.

PROCEDURAL BACKGROUND

In 1997, defendant was convicted on two counts of forgery in violation of Penal Code section 470, subdivision (d). The trial court found that defendant had suffered twenty prior strike convictions within the meaning of sections 667 and 1170.12, including a conviction for attempted murder in violation of Penal Code sections 664 and 187. The trial court sentenced defendant under the Three Strikes law to a term of 53 years to life.

In November 2014, defendant filed a petition to recall his sentence pursuant to Penal Code section 1170.126. The trial court rejected the petition on procedural grounds, ruling that defendant did not provide proof of service on the District Attorney and citing *Kaulick v. Superior Court* (2013) 215 Cal.App.4th 1279, 1302 and footnote 24.

DISCUSSION

Pursuant to *People v. Wende, supra*, 25 Cal.3d 436, we examined the entire record to determine if there were any arguable issues on appeal. Based on that independent review, we have determined there are no arguable issues on appeal because even assuming, arguendo, that the trial court erred by rejecting defendant's petition to recall his sentence on procedural grounds, defendant was not entitled to resentencing because his prior conviction for attempted murder made him ineligible for resentencing under Penal Code sections 1170.126, subdivision (e)(3) and 667, subdivision (e)(2)(iv)(IV). We are therefore satisfied that defendant's appointed counsel has fully satisfied his responsibilities under *Wende, supra*, 25 Cal.3d 436.

DISPOSITION

The order denying defendant's petition to recall his sentence is affirmed.

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MOSK, Acting P. J.

We concur:

KRIEGLER, J.

KIRSCHNER, J. *

* Judge of the Superior Court of the County of Los Angeles, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.